

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GREEN MOUNTAIN HOLDINGS (CAYMAN)
LTD,

Plaintiff,

ORDER

21-CV-5844 (MKB) (TAM)

v.

501 LAFAYETTE AVE LLC and SHANITA
JONES,

Defendants.

MARGO K. BRODIE, United States District Judge:

Plaintiff Green Mountain Holdings (Cayman) LTD (“Green Mountain”) commenced the above-captioned action on October 20, 2021, against Defendants 501 Lafayette Ave LLC and Shanita Jones, seeking to foreclose on a mortgage encumbering the property located at 501 Lafayette Avenue, Rockville Centre, New York 11570 (the “Property”), pursuant to the New York Real Property Actions and Proceedings Law (“RPAPL”) § 1301 *et seq.* (Compl., Docket Entry No. 1.) Plaintiff also seeks damages, including the unpaid balance due on the mortgage in the amount of \$265,000 plus accrued interest, and attorneys’ fees. (Compl. ¶ 19; Aff. of Amounts Due to Pl., annexed to Pl.’s Second Mot. for Default J. (“Pl.’s Mot.”) as Ex. C, Docket Entry No. 21-6.) Defendants initially failed to appear or otherwise defend this action, and the Clerk of Court entered default against both Defendants on March 18, 2022. (Entry of Default dated Mar. 18, 2022, Docket Entry No. 13.) Plaintiff moved for a default judgment against Defendants on April 6, 2022, (Pl.’s First Mot. for Default J., Docket Entry No. 14), and the Court referred the motion to Magistrate Judge Taryn A. Merkl for a report and recommendation, (Order dated Apr. 6, 2022). Following Judge Merkl’s order seeking clarification of Plaintiff’s first

default judgment motion, (Order dated Sept. 27, 2022), Plaintiff sought and was granted an order terminating the first motion with leave to file a renewed motion, (Order dated Dec. 16, 2022).

Plaintiff filed its second default judgment motion on January 19, 2023. (Pl.’s Mot.) Counsel for all parties appeared at a status conference on May 11, 2023, (Minute Entry dated May 11, 2023), and Defendants indicated their intent to move to vacate the default against them, (Status Report dated May 17, 2023, Docket Entry No. 25). The Court then referred Plaintiff’s second motion for default judgment and Defendants’ anticipated motion to vacate the default to Judge Merkl for a report and recommendation. (Order dated May 18, 2023.) Defendants filed an opposition to Plaintiff’s motion for default judgment on July 31, 2023. (Defs.’ Opp’n to Pl.’s Mot. (“Defs.’ Opp’n”), Docket Entry No. 29.)

By report and recommendation dated August 18, 2023, Judge Merkl recommended that the Court deny Plaintiff’s second motion for default judgment based on Plaintiff’s failure to establish compliance with New York’s mortgage foreclosure procedures, as set forth in RPAPL §§ 1303 and 1320. (R&R 16–18, Docket Entry No. 31.) Judge Merkl further recommended requiring Plaintiff to show cause to demonstrate its compliance with RPAPL §§ 1303 and 1320. (R&R 18.) No objections to the R&R have been filed and the time for doing so has passed.

I. Discussion

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate[] [judge’s] report and recommendation operates as a waiver of further judicial review of the magistrate[] [judge’s] decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Miller v. Brightstar Asia, Ltd.*, 43 F.4th 112, 120 (2d Cir. 2022) (“[T]his court has

‘adopted the rule that when a party fails to object timely to a magistrate[] [judge’s] recommended decision, it waives any right to further judicial review of that decision.’” (internal quotation marks omitted) (quoting *Wesolek v. Canadair Ltd.*, 838 F.2d 55, 58 (2d Cir. 1988)); *Phillips v. Long Island R.R. Co.*, 832 F. App’x 99, 100 (2d Cir. 2021) (observing the same rule); *Almonte v. Suffolk Cnty.*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (“Failure to object to a magistrate judge’s report and recommendation within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.’” (first quoting *United States v. Male Juv.*, 121 F.3d 34, 38 (2d Cir. 1997); and then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1). The Court denies Plaintiff’s motion.

II. Conclusion

Accordingly, the Court adopts the R&R in its entirety and (1) denies Plaintiff's motion for a default judgment, and (2) directs Plaintiff to show cause to demonstrate its compliance with RPAPL §§ 1303 and 1320.

Dated: September 15, 2023
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge